



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

JUL 14 2017

Thomas H. Patrick  
1313 175<sup>th</sup> Street  
Homewood, IL 60430

RE: MUR 7211  
Thomas H. Patrick

Dear Mr. Patrick:

On May 1, 2017, the Federal Election Commission (the "Commission") notified you of a complaint alleging that you violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided you with a copy of the complaint. On July 11, 2017, the Commission found reason to believe that you violated 52 U.S.C. §§ 30104(c) and 30120, provisions of the Act, by failing to file independent expenditure disclosures and failing to use proper disclaimers in your public communications. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to you as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that the Committee violated the law.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in engaging in pre-probable cause conciliation, please contact Camilla Jackson Jones, the attorney assigned to this matter, at (202) 694-1507 or (800) 424-9530, or at [cjacksonjones@fec.gov](mailto:cjacksonjones@fec.gov), within seven days of receipt of this letter. Due to the age of this matter, the Commission has made pre-probable cause conciliation in this matter contingent upon the execution of an agreement to toll the statute of limitations. Enclosed is a Tolling Agreement that you will need to execute and return to the Commission before pre-probable cause conciliation may commence.

During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, the Commission may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at <http://www.fec.gov/respondent.guide.pdf>.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed Statement of Designation of Counsel form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

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<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENT: Thomas H. Patrick

MUR 7211

4  
5 **I. INTRODUCTION**

6 The Complaint in this matter alleges that Thomas H. Patrick violated 52 U.S.C.  
7 §§ 30104(c) and 30120 of the Federal Election Campaign Act of 1971, as amended, (the "Act")  
8 by failing to report independent expenditures for, and failing to include appropriate disclaimers  
9 on, a mailing sent to 10,145 registered voters in August 2012. The mailing expressly advocated  
10 the defeat of then-President Barack Obama and the election of Mitt Romney in the 2012  
11 presidential election and the election of Josh Mandel in the 2012 Ohio Senatorial election.<sup>1</sup>  
12 Respondent did not respond to the Complaint.

13 The Commission finds reason to believe that Thomas H. Patrick violated 52 U.S.C.  
14 §§ 30104(c) and 30120.

15 **II. FACTUAL AND LEGAL ANALYSIS**

16 **A. Facts**

17 Complainant alleges that on or about August 27, 2012, Respondent sent a cover letter, a five-  
18 page memorandum, printed exhibits, and a DVD of the movie *Dreams From My Real Father*<sup>2</sup> to all  
19 voters in ZIP code 44425 (Hubbard, Ohio).<sup>3</sup> The cover letter states that Respondent sent the materials to  
20 the "10,145 registered voters" in that ZIP code.<sup>4</sup> The cover letter criticizes President Obama and states

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<sup>1</sup> Compl. at 7-8 (Oct. 20, 2016).

<sup>2</sup> *Id.* at Ex. 1. *Dreams From My Real Father* was made available for purchase online in July 2012. See MUR 6779 (Gilbert) FGCR (reciting history of the production and distribution of the *Dreams* DVD).

<sup>3</sup> The Complaint misidentifies the target audience as living in Hubbard, Illinois, but the content of the mailer makes it clear that it was sent to registered voters in Hubbard, Ohio.

<sup>4</sup> *Id.*

1 that the material is being provided to seek “support for conservative free market candidates this  
2 November.” The last paragraph of the letter states, “I ask that you cast your vote based on careful  
3 analysis rather than routine party loyalty.”<sup>5</sup> It concludes, “[t]he coming election is unlike any we have  
4 ever faced. Please take time to understand who Obama really is and where he intends to take the United  
5 States. . . . [c]areful analysis will lead you to the conclusion that he is intent on destroying much of what  
6 you hold dear.”<sup>6</sup>

7 The five-page memorandum attached to the cover letter advocates against the re-election of  
8 Obama and for the election of Romney and Mandel.<sup>7</sup> The memorandum criticizes Obama’s policies and  
9 “calls for committed action to *defeat Obama*. Ohio is a pivotal state and our personal efforts could  
10 swing the election.”<sup>8</sup> The memorandum closes by stating, “It is my hope that you will *join me in this*  
11 *effort to support not only Gov. Romney but also. . . Josh Mandel, the Republican senatorial candidate in*  
12 *Ohio. . .*”<sup>9</sup>

13 Complainant alleges that a DVD of the movie, *Dreams From My Real Father*, was attached to  
14 the cover letter and memorandum.<sup>10</sup> The 95-minute film purports to tell the “true” history of Obama’s  
15 parentage and biographical background in the style of a documentary.<sup>11</sup> Complainant contends that the

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5 *Id.* at 4.

6 *Id.*

7 Compl., Ex. 1.

8 *Id.*

9 *Id.* (emphasis added).

10 Compl. at 3, Ex. 2; Supp. Compl., Ex. 1.

11 *Id.* at 3-4.

1 film uses false information and conspiracy theories to attack Obama's character and credibility, and was  
2 produced and distributed in an effort to defeat Obama in the 2012 Presidential election.<sup>12</sup>

3 Complainant contends that because the DVD is sold on various websites for \$14.95, Respondent  
4 potentially spent over \$150,000 for this mailer,<sup>13</sup> but did not report the mailer as an independent  
5 expenditure, nor did he include the required disclaimer.

6 **B. Analysis**

7 **1. Failure to Report Independent Expenditures**

8 The Act defines "expenditure" as "any purchase, payment, distribution, loan, advance,  
9 deposit, or gift of money or anything of value made by any person for the purpose of influencing  
10 any election for Federal office."<sup>14</sup> An "independent expenditure" is an expenditure by a person  
11 expressly advocating the election or defeat of a clearly identified federal candidate that is not  
12 made in concert or cooperation with or at the request or suggestion of such candidate, the  
13 candidate's authorized political committee, or their agents, or a political party committee or its  
14 agents.<sup>15</sup> Every person, other than a political committee, who makes independent expenditures  
15 over \$250 in a calendar year must disclose those expenditures in reports to the Commission.<sup>16</sup>

16 In determining whether a communication contains express advocacy, the Commission  
17 analyzes the message under 11 C.F.R. § 100.22(a), or the broader definition at 11 C.F.R.

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<sup>12</sup> Compl. at 3-4.

<sup>13</sup> *Id.* at 4, Exs. 2, 5.

<sup>14</sup> 52 U.S.C. § 30101(9)(A)(i); 11 C.F.R. § 100.11.

<sup>15</sup> 52 U.S.C. § 30101(17).

<sup>16</sup> 52 U.S.C. § 30104 (b)(3)(A), (c)(1).

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1 § 100.22(b).<sup>17</sup> Here, the mailer expressly advocated Obama's defeat and Romney's and  
2 Mandel's election under 11 C.F.R. § 100.22(a).

3 A communication expressly advocates the election or defeat of a clearly identified federal  
4 candidate under Section 100.22(a) if it uses phrases including, but not limited to, "Support the  
5 Democratic nominee" and "vote against Old Hickory" or "'defeat' accompanied by a picture of  
6 one or more candidates," or "reject the incumbent," or "communications of campaign slogan(s)  
7 or individual word(s), which in context can have no other reasonable meaning than to urge the  
8 election or defeat of one or more clearly identified candidates such as posters, bumper stickers,  
9 advertisements, etc., which say 'Nixon's the One,' 'Carter '76,' 'Reagan/Bush,' or 'Mondale!' or  
10 "vote Pro-Life" or "vote Pro-Choice" with a listing of clearly identified candidates described as  
11 Pro-Life or Pro-Choice.<sup>18</sup>

12 Respondent's memorandum contains statements that expressly advocated Obama's defeat  
13 and Romney's and Mandel's elections:

- 14 • Conclusion - calls for committed action to *defeat Obama*. Ohio is a pivotal state  
15 and our personal efforts could swing the election.<sup>19</sup>
- 16 • It is my hope that you will join me in this effort and *support not only Gov.*  
17 *Romney but also others, particularly, Josh Mandel, the Republican senatorial*  
18 *candidate in Ohio*].<sup>20</sup>

<sup>17</sup> Political Committee Status, 72 Fed. Reg. at 5595, 5606 (Feb. 7, 2007) ("PC Status E&J").

<sup>18</sup> 11 C.F.R. § 100.22(a). The Commission explained that the phrases enumerated in 11 C.F.R. § 100.22(a), such as "Smith for Congress" and "Bill McKay in '94," have no other reasonable meaning than to urge the election or defeat of a clearly identified candidate. *See Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures*, 60 Fed. Reg. 35,292, 35,294-35,295 (July 6, 1995) ("EA E&J"). *See FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 249 (1986) (a communication is express advocacy when "it provides, in effect, an explicit directive" to vote for the named candidates) ("MCFL").

<sup>19</sup> Compl., Ex. 1 at 1. (emphasis added).

<sup>20</sup> *Id.* at 6 (emphasis added).

1 Both of these statements explicitly calls for the defeat or election of a federal candidate.

2 Accordingly, the mailer contains Section 100.22(a) express advocacy.<sup>21</sup>

3 Because Respondent's communication contained express advocacy, it is an independent  
4 expenditure, and the available information strongly indicates that it exceeded the \$250 reporting  
5 threshold. The cover letter states Respondent mailed it to 10,145 registered voters in Hubbard,  
6 Ohio.<sup>22</sup> Given the cost of postage, the DVDs (reportedly \$14.95 per copy), and mailing  
7 materials for 10,145 packages, Respondent almost certainly spent more than \$250 on the mailer.  
8 Thus, Respondent was required, but failed, to report his independent expenditures to the  
9 Commission. Therefore, the Commission finds reason to believe that Thomas H. Patrick  
10 violated 52 U.S.C. § 30104(c).

## 11 2. Missing Disclaimer

12 The Act requires disclaimers identifying the person who paid for any public  
13 communication that expressly advocates the election or defeat of a clearly identified federal  
14 candidate.<sup>23</sup> "Public communications" include "mass mailings," which are mailings of more  
15 than 500 pieces of mail of an identical or substantially similar nature within any 30-day  
16 period."<sup>24</sup>

17 The disclaimer must be "presented in a clear and conspicuous manner, to give the reader,  
18 observer, or listener adequate notice of the identity of the person or political committee that paid

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<sup>21</sup> See *MCFL*, 479 U.S. at 249. In addition to satisfying the test for express advocacy under 100.22(a), certain portions of the communication likely satisfy the standard for express advocacy under 100.22(b). However, because the communication clearly satisfies 100.22(a), it is unnecessary to analyze it under 100.22(b) to make reason to believe findings in this particular case.

<sup>22</sup> Compl., Exs. 1, 5.

<sup>23</sup> 52 U.S.C. § 30120(a)(2); 11 C.F.R. § 110.11(a)-(c).

<sup>24</sup> 52 U.S.C. § 30101(22), (23); 11 C.F.R. §§ 100.26, 100.27.

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